S.B. CIVIL WRIT PETITION NO.531/2005
Meetha Lal vs. Civil Judge (JD), Jalore and another.

Date : 25.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. T.S. Champawat, for the petitioner.

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Heard learned counsel for the petitioner.

It appears from the facts of the case that the proceedings before the trial court were dragged on by the party and even the trial court did not pass appropriate orders at the relevant time and went on adjourning the matter for years together.

The facts of the case reveals that in the suit filed by the plaintiff, a counter claim was filed and time was granted to the plaintiff to file reply to the counter claim. Ultimately, the trial court passed an order to proceed ex-parte against the plaintiff and fixed the counter claim for ex-parte evidence on 15.4.1998. The counter claim was thereafter amended seeking permission of the Court. The amended counter claim was filed in the Court on 24.11.1998 and on that day, the application was submitted on behalf of the plaintiff seeking time to file reply. The case was adjourned. However, the amended counter claim itself was filed in the Court on 18.1.1999.

The plaintiff submitted an application under Section 151 C.P.C., as stated above, on 24.11.1998 and submitted that the plaintiff had no knowledge of the

fact that the amended counter claim has been taken on record, therefore, the plaintiff could not file reply to the counter claim. The plaintiff prayed that the order dated 15.4.1998 may be recalled and set aside.

The said application of the plaintiff was opposed by the defendant on various grounds which are narrated in para no.4 of the impugned order.

The trial court, after considering the proceedings which were taken in the trial court, allowed the application on payment of cost of Rs.200/- and permitted the plaintiff to take part in the proceedings from the stage where the plaintiff started putting his appearance after the ex-parte order. The trial court further allowed the plaintiff to cross examine the witnesses of the defendant.

In the totality of the facts and circumstances, I do not find any reason to permit the petitioner to avail this opportunity to challenge the impugned order under Article 227 of the Constitution of India.

Consequently, this writ petition, having no merit, is hereby dismissed.

However, the petitioner will be free to challenge the impugned order, in case any occasion arises before the appellate court.

(PRAKASH TATIA), J.

S.Phophaliya